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THE TRAVANCORE GOVERNMENT GAZETTE EXTRAORDINARY

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TRIVANDRUM, WEDNESDAY, 30TH OCTOBER 1946/13TH THULAM 1122.

THE ADMINISTRATION OF MARTIAL LAW PROCLAMATION, 1122.

PROCLAMATION

BY

MAJOR GENERAL HIS HIGHNESS SRI PADMANABHA DASA VANCHI PALA SIR BALA RAMA VARMA KULASEKHARA KIRITAPATI MANNEY SULTAN MAHARAJA RAJA RAMA RAJA BAHADUR SHAMSHER JANG, KNIGHT GRAND COMMANDER OF THE MOST EXALTED ORDER OF THE STAR OF INDIA KNIGHT GRAND COMMANDER OF THE MOST EMINENT ORDER OF THE INDIAN EMPIRE, D. LITT. MAHARAJA OF TRAVANCORE ISSUED UNDER DATE THE 13TH THULAM 1122 CORRESPONDING TO THE 30TH OCTOBER 1946.

WHEREAS it is necessary to empower military authorities to make regulations and to issue orders to provide for public safety and the maintenance and restoration of order, to authorise the trial of certain offences by special courts, and to provide for other matters connected with the administration of Martial Law :—

We are pleased to Command as follows :—

Short title, extent and commencement.

1. (1) This Proclamation may be called "The Administration of Martial Law Proclamation, 1122."

(2) It shall apply to the areas declared to be subject to Martial Law.

(3) It shall be deemed to have come into force on the 8th Thulam 1122.

Officers to administer Martial Law.

2. In the areas in which Martial Law is for the time being in force, the Lieut. General of the Travancore State Forces, or an officer not below the rank of Major empowered by him in this behalf, shall appoint one or more military officers, not being lower in rank than a Captain, to be military Commanders to administer Martial Law (any such officer being hereinafter referred to as the Military Commander) and the Military Commander shall exercise his powers in respect of such area, or such part thereof (hereinafter referred to as the Administration area) as the appointing authority may direct.

3. (1) Subject to the provisions of this Proclamation the Military Commander shall have power to make regulations to provide for the public safety and the maintenance and restoration of order and as to the powers and duties of Military Officers and others in furtherance of that purpose.

Regulations.

(2) Such regulations may provide that any contravention thereof, or of any order issued thereunder, or supplementary thereto, shall be punishable with any punishment authorised by any law in force in Travancore and any such contravention shall for the purposes of this Proclamation be deemed to be an offence against a regulation or an order, as the case may be.

(3) The power to make regulations shall be subject to the following conditions, namely:—

(i) In making any regulation the Military Commander shall interfere with the ordinary avocations of life as little as may be consistent with the exigencies of the measures which he deems to be requisite to be taken for the purposes of Martial Law.

(ii) Before making any regulations the Military Commander shall ordinarily consult the District Magistrate in direct charge of the administration area in which he exercises power.

(iii) The penalty, if any, for the contravention of a regulation shall be specified therein.

(iv) The Military Commander shall cause any regulation made by him to be published in such manner as he thinks best fitted to bring it to the notice of those affected and shall transmit a copy of the regulation so made to the Lieut. General.

4. (1) The Military Commander may by order in writing empower any Magistrate or any Military Officer not below the rank of Captain to make Martial Law Orders in any part of the Administration area for the purpose of supplementing the regulations in that area and the punishment for the contravention of any such order shall be that specified in the regulations for the contravention of a Martial Law Order:

Martial Law Orders.

Provided that no such order shall be made which is inconsistent with the regulations.

(2) Every Magistrate or Officer making a Martial Law Order under sub-section (1) shall cause the same to be published in such manner as he thinks best fitted to bring it to the notice of those affected.

(3) A copy of every such order shall, as soon as may be, be submitted to the Military Commander who shall have power to add to, modify, or rescind any such order in such way as he thinks fit.

(4) Where a Military Commander has under sub-section (3) added to, modified, or rescinded any such order he shall forthwith communicate the fact to the Magistrate or officer who made the order and such Magistrate or officer shall thereupon cause to be published in the manner hereinbefore mentioned the order as so added to or modified or the fact that the order has been rescinded as the case may be.

Courts under the Proclamation.

5. (1) Summary courts of criminal jurisdiction may be constituted for the purposes of this Proclamation in any Administration Area in the manner hereinafter provided.

(2) The Military Commander may, by general or special order in writing, empower any Magistrate appointed under the provisions of the Code of Criminal Procedure, 1117, to exercise the powers of a summary court.

Limitation of jurisdiction of Summary Courts

6. No summary court shall try any offence unless such offence was committed or is deemed to be committed—

(a) in the Administration area in which such court was constituted, and

(b) after such date (whether before or after the date of the Proclamation of Martial Law in the area) as Our Dewan may in respect of such area by notification in Our Government Gazette direct in this behalf.

Trial of offences against regulations or Martial Law orders.

7. (1) Every offence against a regulation or a Martial Law Order which is triable by a summary court shall be tried by such court unless the Military Commander directs that it be tried by the ordinary criminal courts.

(2) The ordinary criminal courts shall try any offence in respect of which a Military Commander has made a direction under sub-section (1) and any offence against a regulation or Martial Law Order which is not triable by a summary court.

(3) Contravention of any regulation or order made or issued in any area after the date notified in respect of that area under clause (b) of Section 6 and prior to the enforcement of Martial Law in that area by any officer acting in the exercise of military control for the purpose of providing for the public safety or the maintenance or restoration of order shall be deemed to be offences against a regulation or a Martial Law Order in force in that area under this Proclamation and shall be triable and punishable as if any sentence authorised by any such aforesaid regulation or order were a sentence authorised by a regulation under this Proclamation.

8. (1) Subject to the provisions of Section 6, offences, other than offences of the kind referred to in Section 7, connected with the events which have necessitated the enforcement or continuance of Martial Law, or any class of such offences, may, if the Military Commander by general or special order so directs, be tried by summary courts.

Trial of offences connected with events necessitating Martial Law.

(2) If any question arises whether or not an offence is an offence of the nature described in sub-section (1), the decision of the summary court shall be conclusive in the point and such decision shall not be questioned in any court.

(3) The Military Commander or any authority empowered by him in this behalf may, by a general or special order give directions as to the distribution among the summary courts of cases to be tried by them under Section 7 or this Section.

9. Save as otherwise provided in this Proclamation all offences shall be dealt with by the ordinary criminal courts exercising jurisdiction in the Administration area in the ordinary course of law.

Trial of other offences.

10. The ordinary civil courts shall continue to exercise civil jurisdiction in the areas in which Martial Law is in force provided that no civil court shall exercise any jurisdiction by way of interference in any manner with any Regulation or Martial Law Order.

Jurisdiction of ordinary civil courts.

11. In the trial of any case a summary court shall, as far as possible, follow the procedure laid down in the Code of Criminal Procedure, 1117. for the trial of warrant cases and shall have all the powers conferred by the said Code on a Magistrate in regard to the issue of processes to compel appearances and to compel the production of documents and other movable property:

Procedure of Summary Courts.

Provided that the court shall not be required to record more than a memorandum of the evidence or to frame a formal charge:

Provided further that, in the trial of any offence punishable with imprisonment for a term not exceeding one year, the court may follow the procedure for the summary trial of cases as laid down in Chapter XXII of the said Code.

12. Summary courts may pass any sentence authorised by law or by regulations under this Proclamation provided that such courts shall not pass a sentence of imprisonment for a term exceeding two years, or of fine exceeding one thousand rupees.

Sentences by Summary Courts.

13. (1) No person shall be tried by a summary court for an offence which is punishable with imprisonment for a term exceeding five years.

Jurisdiction of Summary Courts.

(2) If a summary court is of opinion that the offence disclosed is one which it is not empowered to try, it shall send it for trial to an ordinary criminal court having jurisdiction.

(3) If a summary court is of opinion that an offence which it is empowered to try should be tried by an ordinary criminal court, or that it requires a punishment in excess of that which it is empowered to inflict, it shall stay proceedings and report the case for the orders of the Military Commander, who may direct that the case shall be tried by a summary court, or may send it to an ordinary criminal court having jurisdiction.

Legal practitioners.

14. Every person accused of an offence before a summary court shall be entitled to be defended by a legal practitioner:

Provided that the court shall not be required to grant an adjournment for the purpose of securing the attendance of a legal practitioner if, in the opinion of the court, such adjournment would cause unreasonable delay in the disposal of the case.

Exclusion of interference by other Courts.

15. Notwithstanding the provisions of the Code of Criminal Procedure, 1117, or of any other law for the time being in force, or of anything having the force of law by whatsoever authority made or done, there shall be no appeal from any order or sentence of a summary court, and no court shall have authority to revise such order or sentence or to transfer any case from a summary court, or to make any order under Section 402 of the Code of Criminal Procedure, 1117, or have any jurisdiction of any kind in respect of any proceedings of a summary court:

Provided that the judgment and sentence of a summary court may be revised by the Lieut. General.

Limitation of power of summary Court to whip.

16. Notwithstanding anything contained in sub-section *(2)* of Section 3, no summary court shall pass a sentence of whipping for any offence against a regulation or Martial Law Order except where the offender has in the commission of the offence used criminal force within the meaning of the Travancore Penal Code.

Execution of sentence of whipping.

17. In the execution of any sentence of whipping passed by a summary court the provisions of sub-section *(2)* of Section 323 and the provisions of Sections 324 and 325 of the Code of Criminal Procedure, 1117, shall apply and every such sentence shall, as far as possible, be carried out in a place to which the public shall not be admitted.

"Offence" defined.

18. Unless there is anything repugnant in the subject or context, the word 'offence' shall be deemed for the purposes of this Proclamation and of Sections 332 and 333 of the Code of Criminal Procedure, 1117, to include an act which is or which under the provisions of this Proclamation is deemed to be an offence against a Regulation or a Martial Law Order.

19. Nothing in this Proclamation shall be construed as in derogation of any powers for the maintenance of law and order exercisable by the Government or any other authority duly authorised in that behalf by the Government.

Saving.

20. Any sentence passed in any area after the date notified in respect of that area by the Dewan under clause (b) of Section 6 and prior to the enforcement of Martial Law in that area in respect of any contravention of a regulation or order made or issued within the same period by any officer acting in the exercise of military control for the purpose of providing for the public safety or the maintenance or restoration of order shall be deemed to be as valid as if it were a sentence passed under this Proclamation in respect of an offence against a regulation or a Martial Law Order in force in that area under this Proclamation.

Validation of Martial Law sentences prior to declaration of Martial Law.

21. No suit, prosecution or other legal proceeding whatsoever shall lie against any person for or on account of or in respect of any act, matter or thing ordered or done or purporting to have been ordered or done (a) under this Proclamation or (b) in the exercise of military control in any area for the purpose of providing for the public safety or the maintenance or restoration of order after the date notified in respect of that area by the Dewan under clause (b) of Section 6 and prior to the enforcement of Martial Law in that area:

Protection of bonafide action.

Provided that such person has acted in good faith and in the reasonable belief that his action was necessary for the said purposes:

Provided further that nothing in this section shall prevent the institution of proceedings by or on behalf of the Government against any person in respect of any matter whatsoever.

SIGN MANUAL.

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